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United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GARY LEE BRIGGS,

Defendant.

CASE NO. 1:20-CR-00041 NONE-SKO

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
FINDINGS AND ORDER

PROPOSED DATE: August 17, 2020
TIME: 1:00 p.m.
COURT: Hon. Sheila K. Oberto

This case is set for a status conference on May 18, 2020. On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to continue all criminal matters to a date after June 1. This order and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive open-endedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case. *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice continuance must set forth explicit findings on the record "either orally

or in writing”).

Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice continuances are excludable only if “the judge granted such continuance on the basis of his findings that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the ends of justice served by the granting of such continuance outweigh the best interests of the public and the defendant in a speedy trial.” *Id.*

The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7). Although the Speedy Trial Act does not directly address continuances stemming from pandemics, natural disasters, or other emergencies, this Court has discretion to order a continuance in such circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules. In light of the societal context created by the foregoing, this Court should consider the following case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any pretrial continuance must be “specifically limited in time”).

STIPULATION

Plaintiff United States of America, by and through its counsel of record, and defendant, by and through defendant’s counsel of record, stipulate as follows:

¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

1 By previous order, this matter was set for a status conference on May 18, 2020.

2 By this stipulation, the parties move to continue the status conference until August 17,
3 2020, and to exclude time between May 18, 2020, and August 17, 2020.

4 3. The parties stipulate, and request that the Court find the following:

5 a) Counsel for defendant desires additional time to consult with his client, to review
6 the current charges and conduct additional investigation and research related to the charges, to
7 discuss potential resolutions with his client, and to evaluate and potentially prepare pretrial
8 motions. In part this is because the government has continued its investigation of the crimes, the
9 government has provided initial and supplemental discovery, and counsel and the defendant will
10 benefit from additional time to consider this material. The parties are also in the early stages of
11 attempting to resolve the case without the need for a trial, but there will not be sufficient clarity
12 on that effort prior to the May 18, 2020, court date.

14 b) Counsel for defendant believes that failure to grant the above-requested
15 continuance would deny them the reasonable time necessary for effective preparation, taking into
16 account the exercise of due diligence.

18 c) The government does not object to the continuance and joins in the request.

19 d) In addition to the public health concerns cited by General Orders 611, 612 and
20 617 presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt
21 in this case because counsel or other relevant individuals have been encouraged to telework and
22 minimize personal contact to the greatest extent possible. It will be difficult to avoid personal
23 contact should the hearing proceed. For these reasons, the court encouraged on May 8, 2020, the
24 parties to enter this stipulation.

26 e) Based on the above-stated findings, the ends of justice are served by continuing
27 the case as requested and outweigh the interest of the public and the defendant in a trial within
28 the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period of May 18, 2020, to August 17, 2020, inclusive, is deemed excludable under 18 U.S.C. § 3161(h)(7)(A), and (B)(iv), because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

4. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: May 13, 2020

McGREGOR W. SCOTT
United States Attorney

/s/ David Gappa
David L. Gappa
Assistant United States Attorney

Dated: May 14, 2020

/s/ John Meyer
(authorized on 5/14/20)
John Meyer
Counsel for Defendant
GARY LEE BRIGGS

FINDINGS AND ORDER

The court has reviewed and considered the stipulation that the parties filed on May 14, 2020. Based on the reasons articulated in that filing, the court finds good cause to move the current status conference from May 18, 2020, to August 17, 2020, and to exclude time under the Speedy Trial Act under 18 U.S.C. § 3161(h)(7)(A), and (B)(iv), because it results from a continuance granted by the Court at defendant's request on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

IT IS SO ORDERED.

Dated: May 14, 2020

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE